

Exhibit 4

Response to Comments

RESPONSE TO COMMENTS ON THE CONSENT DECREE

On December 29, 2021, the Department of Justice (“Department”) lodged a proposed Consent Decree with the United States District Court for the District of South Carolina, in the lawsuit entitled *United States v. New-Indy Catawba LLC*, Civil Action No. 0:21-cv-02053-SAL.

The United States filed the lawsuit under the Clean Air Act (“CAA”). The United States’ complaint seeks injunctive relief related to emissions of Hydrogen Sulfide (“H₂S”) from New Indy Catawba LLC’s (“New Indy”) paper mill in Catawba, South Carolina. The proposed Consent Decree requires the defendant to perform injunctive relief to abate H₂S emissions, and to pay a \$1.1 million civil penalty.

Notice of the proposed Consent Decree was published in the Federal Register, 87 Fed. Reg. 1,186 (January 10, 2022), and public comments were solicited in accordance with Department policy, 28 C.F.R. § 50.7, and Paragraph 81 of the proposed Consent Decree. Upon request, the Department extended the comment period by 30 days. 87 Fed. Reg. 7208 (February 8, 2022). Over 600 public comments were submitted.

The United States reviewed each comment and concluded that there was no disclosure of facts or considerations indicating that the CD is inappropriate, improper or inadequate. C.D. ¶ 81.

The following are the Department’s responses, in consultation with EPA, to the concerns raised by the comments.

I. BACKGROUND ON THE NATURE OF THE ENDANGERMENT AND SETTLEMENT

This case involves an imminent and substantial endangerment to human health arising from emissions of H₂S from New Indy’s pulp and paper mill in Catawba South Carolina (the “Facility”). The proposed Consent Decree will resolve the civil claim of the United States alleged in the Complaint filed in this action through the date of lodging as well as the United States’ claim for a civil penalty for violations of the EPA’s May 13, 2021, CAA Section 303 Order (the “Emergency Order”) and the Court’s July 13, 2021 Consent Order from May 13, 2021 through the date of lodging of the Consent Decree. The Complaint filed in this action sought injunctive relief under Section 303 of the CAA, 42 U.S.C. § 7603, the provision of the CAA that grants to the United States EPA special “emergency powers” to issue orders, and to the United States to file civil actions, to immediately restrain pollution sources from causing or contributing to an imminent and substantial endangerment. The Complaint does not allege that New Indy violated any specific emission standard or limitation under any statute, regulation, or permit condition, and the proposed Consent Decree reserves the right of the United States to bring a future action for penalties or injunctive relief for any such violations not expressly specified in the July 12, 2021 Complaint.

As discussed in the EPA’s 1999 “Guidance on Section 303 of the Clean Air Act,” Section 303 is a “gap-filling” authority, providing a basis for injunctive relief for a wide range of endangerment scenarios, regardless of a pollution source’s compliance or noncompliance with any provision of

the CAA.¹ It also provides for injunctive relief when an air pollutant(s) is not otherwise regulated under the CAA.

This case began in February of 2021, when the South Carolina Department of Health and Environmental Control (DHEC) and the EPA Region 4 began receiving numerous odor and public health complaints from citizens in the area of Catawba, South Carolina. After a thorough investigation, the EPA determined that the odors and health impacts reported were caused by H₂S emissions coming from the New Indy Facility. New Indy had recently switched from producing bleached paper to unbleached paper and related products. As part of that process change, New Indy stopped using its steam stripper to treat foul condensate (a waste generated from the pulping process) and instead began sending this material to its wastewater treatment system for treatment. During its investigations in April of 2021, the EPA inspectors observed issues with New Indy's wastewater treatment system, including multiple broken aerators and a significant buildup of solids in the Aeration Stabilization Basin (ASB). (Denis Kler Declaration). The EPA also detected concentrations of H₂S on- and off-site of the Facility above health-based levels for H₂S. While the EPA's investigation raised many questions about New Indy's compliance with the CAA and other environmental statutes, questions the EPA continues to investigate, the EPA felt compelled to take immediate action using its CAA Section 303 emergency authority, based on the information it had at the time. (Declaration of Denis Kler).

Accordingly, on May 13, 2021, the EPA issued the Emergency Order to New Indy, requiring it to install three H₂S monitors at its fenceline and prohibiting New Indy from emitting H₂S above health-based concentration levels as measured at the fenceline. The fenceline levels are based on published health-based guidelines: 600 parts per billion (ppb) for a rolling 30-minute average and 70 ppb for a rolling seven-day average. New Indy reported concentrations exceeding the fenceline levels 28 times in June 2021 while implementing initial corrective measures. Under the CAA, Section 303 Orders only last 60 days unless the EPA brings a civil action in federal court, which the United States did on EPA's behalf in this case on July 12, 2021. The Court entered a Consent Order on July 13, 2021, which required New Indy to comply with specific actions (through October 31, 2021) to continue to reduce emissions of H₂S. Dkt. # 6. After the Court's Consent Order was entered, New Indy reported concentrations exceeding the fenceline levels 13 more times in September of 2021. New Indy attributed these exceedances to a weak black liquor spill. Since then, New Indy has continued to take various corrective actions, and the measured H₂S concentrations have fallen dramatically. New Indy has not reported any exceedances of the fenceline concentration levels since September of 2021.

While there may be questions about whether New Indy is in compliance with specific statutory or regulatory requirements of the CAA or other environmental statutes, those concerns are outside the scope of this action. The EPA and DHEC are actively investigating New Indy for other such violations and reserve the right to bring future enforcement actions related to any such potential violations separately from this action.

¹ <https://www.epa.gov/sites/default/files/2021-05/documents/transmittalofguidanceonsection303ofcaa040199.pdf>

II. HEALTH IMPACTS, ODORS, IMPACT ON QUALITY OF LIFE, AND THEIR RELATIONSHIP TO NEW INDY.

This section of the Response to Comments relates generally to whether or not emissions to the air from the New Indy Facility have caused odors, headaches, nausea, or other health impacts; whether or not those impacts change with the wind direction, and whether or not those odors or impacts changed with the arrival of New Indy as the new owner of the Facility.

In general, these comment topics do not specifically support or oppose the proposed Consent Decree, rather, they described ambient conditions in the air, and whether those conditions are causing ill effects or not. These specific comments do not call for supporting or rejecting the proposed Consent Decree and thus are arguably not relevant to the question of entering the proposed Consent Decree. But, they do relate to the Facility's air emissions generally, arguably including H₂S. Also, the bulk of the comments that the Department received on the proposed Consent Decree relate to this topic, so we address them in their own section.

Comment Topic 1: New Indy's emissions are causing health effects, such as headaches, sinus issues, nausea etcetera (262 comments)

The topic of observable health conditions (*i.e.*, more than bad odors) was raised about 262 times in the comments. In general, these comments did not specifically tie the health conditions to the proposed Consent Decree. For example:

- The stench often makes me feel sick to my stomach and I develop headaches.
- My husband and I have suffered numerous health symptoms from these emissions, including nausea, headaches, burning nostrils and eyes, and heart palpitations.
- My family and I have been negatively impacted by the New Indy Paper Mill over the last year and a half. Physical complaints are nasal irritation, cough, headaches, sinus infections, difficulty breathing, and nosebleeds
- How does this foul air affect our lives? > constant headaches > heavy breathing after spending time in the yard & neighborhood > nausea on a regular basis > fatigue

Response:

These comments do not require withdrawing the proposed Consent Decree because the proposed Consent Decree imposes enforceable conditions on New Indy to ensure that its emissions of H₂S remain below levels that studies show may cause health effects. The EPA does not dispute that many of the symptoms being described can be the result of H₂S exposure.² Prior to the EPA issuing the Emergency Order, over 14,000 complaints about these types of health and/or comfort impacts were reported, some from residents as far as 30 miles away from the New Indy Facility.

² As the EPA's Emergency Order states, "Inhalation exposures to elevated concentrations of hydrogen sulfide have been shown to cause various adverse health effects. These include, but are not limited to, headache, nausea, difficulty breathing among people with asthma, and irritation of the eyes, nose, and throat. Whether effects occur and their severity depends on the magnitude of exposure, the duration of exposure, and the frequency of exposure."

The nature and level of complaints combined with evidence of H₂S concentrations on and around the New Indy Facility above health-based levels led EPA to issue the Emergency Order.

Because there is no applicable federal ambient air quality standard for H₂S, the EPA established fenceline levels in the Emergency Order based on published health-based guidelines derived from toxicological and epidemiologic studies. The two fenceline levels are 600 ppb over a rolling 30-minute period and 70 ppb over a rolling seven (7) day period. The 600 ppb level is based on the acute exposure guideline level I (AEGL) for H₂S established by the National Advisory Committee (NAC) for Acute Exposure Guideline Levels for Hazardous Substances. (Suh Report). AEGLs for H₂S and other compounds provide public health guidance in dealing with “rare, usually accidental releases, of chemicals into the air,” consistent with protecting against imminent and substantial danger to public health. AEGLs are developed under formal guidance and are subject to a rigorous scientific peer-review process overseen by the National Research Council of the National Academies. (Suh Report). AEGLs are established for term exposures of 10 minutes, 30 minutes, 1 hour, 4 hours, and 8 hours for three levels of increasing severity (e.g., AEGL-1, AEGL-2, and AEGL-3) and are expressed as specific concentrations of airborne chemicals at which health effects may occur. (Suh Report). The AEGL-1 concentrations are defined as “the airborne concentration... of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects.” (Suh Report). However, the effects are not disabling, and are transient and reversible upon cessation of exposure. (Suh Report).

The 70 ppb level is based on the minimal risk level (“MRL”) for H₂S, developed by the US Center for Disease Control’s (CDC) Agency for Toxic Substances and Disease Registry (ATSDR) and the US EPA, which is currently set at 70 ppb for longer term exposures (1 day to 14 days). (Suh Report) According to ATSDR, MRLs represent a level at or below which adverse health effects are unlikely to occur and it should not be presumed that occasional excursions above that level will necessarily lead to a manifestation of toxicity, although the risk of experiencing adverse health effects will be expected to increase with increasing frequency and magnitude of excursions above that level.³ Accordingly, the MRLs are intended as a screening tool to evaluate whether the emission controls at the Facility are sufficient to adequately protect human health and welfare and the environment, and they are not intended to define clean up or action levels.⁴

The EPA chose to exercise its CAA Section 303 emergency authority in this case specifically to address the instances of headache, nausea, difficulty breathing, and other health symptoms being reported by the community as a result of exposure to H₂S. The EPA determined that imposing a fenceline level for H₂S concentrations was an appropriate approach to address the imminent and substantial endangerment at issue, and that any level should be based on well-established health-based guidelines for H₂S exposure. The EPA then chose to impose both the 600 ppb level averaged over 30 minutes and the 70 ppb level, averaged over 7 days, to ensure that average H₂S concentrations at New Indy’s fenceline remained below levels that would present minimal risk (i.e., below the MRL) over time, and that short-term higher concentrations of potential concern

³ <https://www.atsdr.cdc.gov/ToxProfiles/tp114.pdf>

⁴ <https://www.atsdr.cdc.gov/ToxProfiles/tp114.pdf>

(i.e., concentrations above the AEGL-1) would not be “masked” by long-term averaging. Dr. Helen Suh of Tufts University subsequently concluded that EPA's analysis is reasonable.

New Indy reported exceeding the fenceline levels 28 times in June 2021 while implementing initial corrective measures and 13 times in September 2021 following a weak black liquor spill. The highest measured concentrations New Indy reported at that time were approximately three times the 7-day and twice the 30-minute levels. All of these exceedances were measured at the southern-most fenceline monitor (monitor 1).

With the exception of the event in September of 2021, the measured concentrations of H₂S in the ambient air steeply declined after New Indy began corrective measures and have consistently remained low. This conclusion is based on a qualitative review of data New Indy has reported from the three fenceline monitors required by the EPA and Court Orders, as well as the five monitors located at various offsite distances from the New Indy Facility (Catawba Headstart, Liberty Hill, Millstone Creek, Riverchase Estates, Tree Tops).⁵ According to the most recent data, H₂S concentrations measured at New Indy's fenceline have stabilized at concentrations well below the health-based levels.

In addition to the ambient air data, the results of surface water sampling done in the ASB show that the concentration of H₂S in New Indy's wastewater have drastically declined since the July of 2021. The amount of H₂S in surface water is important because the more H₂S there is in the surface water, the more H₂S there is available to potentially be emitted into the ambient air. (Declaration of Denis Kler). The following table compares the range of concentrations of H₂S New Indy measured in its wastewater in July of 2021 compared to the preliminary range of results measured in May and July of 2022. The samples were taken from the ASB and Post Aeration Tank.

Table 1 H₂S Concentrations in Wastewater Measured in Micrograms/Liter (ug/L)

Date/Location	ASB Zone 1	ASB Outlet	Post Aeration Tank Surface
July 2021	15,000 – 40, 000	85 – 1,600	79 - 100
May 2022	32 - 77	31 - 43	31 - 41
July 2022	130 - 860	30 – 58	24 - 46

Whereas the concentrations of H₂S measured in the ASB and post aeration tank (downstream of the ASB) were high in July of 2021, they have since fallen to lower ranges according to the sampling results from May and July of 2022. (Declaration of Denis Kler). EPA believes that sending more process condensate to the ASB and the buildup of surface solids and sub-surface solids in the ASB likely contributed to the high levels of H₂S in the wastewater in the summer of 2021. H₂S levels in the wastewater have since lowered, likely because New Indy has reduced the amount of process condensate sent to the ASB and has made progress in removing solids from the ASB. (Declaration of Denis Kler).

⁵ New Indy posts this data on its website daily. See <https://newindycatawba.com/>.

Based on all of the above information, there are currently not any concentrations of H₂S from New Indy above the health-based levels, therefore no such levels can be the cause of any of the various ongoing complaints from the public about nausea, vomiting, headaches, or other health impacts from H₂S. When the EPA filed its Complaint in this action, it acted based on the best information it had available, that H₂S was the most likely culprit for the “rotten egg” smells and associated health impacts. To the extent health effects are resulting from air pollutants other than H₂S, the EPA and DHEC continue to investigate the ongoing emissions and the proposed Consent Decree does not limit their ability to continue their investigations or to take future enforcement actions. (Declaration of Denis Kler)

Because the proposed Consent Decree is intended solely to address H₂S emissions from New Indy, these reports of health impacts do not call for withdrawing from the proposed Consent Decree. Withdrawing from the proposed Consent Decree would require the United States to spend its time and resources litigating a case against New Indy to require H₂S emission controls, when the proposed Consent Decree would require the controls immediately. The EPA’s time and resources are better spent ensuring that there are no other unlawful causes of the alleged ongoing health impacts.

Comment Topic 2: Odor from New Indy has adversely affected quality of life, including odors, anxiety, and related matters (285 comments + 36 comments = 321)

The topic of bad odors was raised about 321 times in the comments. Many of these comments state that odors are very severe and prevent the commenters and families from going outside. Some state that odors even permeate the indoor spaces at homes. About 36 of these commenters described other negative impacts from the New Indy odors, such as pets suffering, fear because of pregnancy, general anxiety, or concern for wildlife. There is overlap between the commenters who complained of health effects (Comment Topic 1) and those who complained of odor.

Examples of the comments are:

- “Please help us stop the horrible smell from the new Indy plant. It makes it difficult to breathe outside. The smell is miserable.”
- “. . . on countless occasions my wife and I have not been able to enjoy the outdoor area of our home---be it for barbequing, entertaining, or maintaining our planting beds. The noxious odors emanating from the New-Indy plant make it impossible at times.”
- There is constant foul smelling air in our neighborhood that hit you as soon as you go outside. It is terrible.
- I am a senior citizen living what are supposed to be the golden years of my life, well New Indy Containerboard has made that anything but that having made my wife and myself prisoners in our own home. We used to enjoy going out for our daily walk until New Indy changed their process, now we cannot go outside without being hit with chemical smells that I cannot even begin to describe.
- “I have also on occasion smelt the odor indoors. It comes in through our vents.”
- My husband and I are currently expecting, and the situation with the plant brings us a lot of anxiety and distress.

- The smell is the least of my concern, my concern is the odor contains HARMFUL toxins and chemicals that affect the health of all humans and our beloved pets
- The effects it is having on wildlife is a concern also for they can't go inside like we can and purchase expensive air purifiers.
- The stench is like a combination of sewage, human waste, burning plastic, and chemicals.

Response:

These comments do not require withdrawing from the proposed Consent Decree because EPA is exercising imminent and substantial endangerment authority in this case to address the adverse health effects of high levels of H₂S, which will not control all bad odor from the paper mill.

H₂S Odors. Many comments referred to “rotten egg” smell, which is likely H₂S. The response to the preceding Comment Topic explained that even if individuals are experiencing rotten-egg smells that are likely attributable to H₂S, the applicable fenceline limits are health-based standards that are intended to address health risks, not odors. As explained above, there is no applicable federal ambient air quality standard for H₂S, so the EPA relied on its authority to issue emergency orders to abate a “substantial endangerment” to public health. The EPA selected two concentrations based on a review of existing literature on H₂S. By selecting the two exposure levels, the EPA was specifically trying to prevent recurrence of headache, nausea, difficulty breathing among people with asthma, and other health symptoms associated with H₂S. After the EPA Emergency Order, since June of 2021 (except for a few violations in September), the fenceline concentrations reported by New Indy have remained below the health-based levels, as set forth above.

People can smell H₂S at low concentrations in ambient air ranging from as low as 0.5 ppb, but others do not detect the odor until 300 ppb. It is also well-known that paper mills tend to emit H₂S odors. In selecting the 70/600 ppb levels, the EPA did not target preventing all H₂S odors from New Indy. Rather, the EPA was addressing an “imminent and substantial endangerment” to public health from the excess H₂S emissions from New Indy. 42 U.S.C. § 7603.

Other Types of Odors. Many comments reported odors that are not usually associated with H₂S, such as sweet, burning plastic, chemicals, and others. To the extent these smells indicate emissions of different compounds, they are not intended to be addressed in the CD, but may be the subject of further investigations outside of the scope of this CD. DHEC is continuing its odor investigation, and continues to compile complaints about odor, and receives complaints about smells like rotten garbage, ammonia, and disinfectant. While it is clear that New Indy was a large source of H₂S, it is not clear what the source of these other odors is, although it may be New Indy. *See also infra*, response to Comment Topic 25 (New Indy is Not the Only Source of Odor Issues in the Community).

There are no federal odor regulations applicable to South Carolina, and the EPA did not consider odor to be a “substantial endangerment” to public health in this case. Thus, the EPA Emergency Order only covers H₂S. Given odors are a known characteristic of paper mills, it would be difficult for the EPA to issue an order calling odor emissions from New Indy a “substantial

endangerment” to public health while leaving all other paper mills in operation without such orders for odors.

DHEC’s odor investigation remains active, and the EPA continues to investigate New Indy for other potential CAA violations. The proposed Consent Decree does not foreclose any such investigations, nor any future actions related to odors. In fact, on June 29, 2022, DHEC transmitted a letter to New Indy, asking it to consent to take additional actions to address air pollution beyond those required by DHEC’s existing Order to Correct Undesirable Level of Air Contaminants (DHEC’s May 7, 2021 Order). Among other remedial actions, the letter asks New Indy to agree to install and operate a new steam stripper to collect and treat all condensate streams, and to maintain the existing stripper as a back-up. The letter requested a meeting with New Indy on July 29, 2022, to discuss this proposal.⁶

Comment Topic 3: No adverse effects, i.e. no bad odor or health impacts experienced (64 comments)

About 64 times the comments stated that there are no, or minimal odors from New Indy, and that they have never had adverse health impacts or reduced quality of life. For example:

- I live nearby mill in Waxhaw and have never smelled the mill. I have had no health issue’s [sic] whatsoever related to mill!
- I have smelt this smell since the early 70's and I have had no side effects from it.
- I have lived nearby the paper mill for almost 30 years now. I personally have never had an issue with the smell of the facility or had an adverse health reaction due to the paper mill. Many in the community feel the same as I.

Response:

These comments do not require withdrawing from the proposed Consent Decree because they do not point out any fault with its terms. The lack of noticeable impacts on some individuals does not undermine the sampling results and EPA’s investigation at the facility which reflected the presence of H₂S emissions at levels that could cause health effects to the public. While this group of comments appears to directly conflict with the preceding comments about health impacts and odors, they are not surprising. First, people usually can smell H₂S at low concentrations in ambient air ranging from as low as 0.5 ppb, but others do not detect the odor until 300 ppb. Thus, there is considerable individual variation in the odor threshold. It is not surprising that some citizens do not smell H₂S or other odors at all.

Second, the health-based concentration thresholds selected by the EPA (70 and 600 ppb) are intended to prevent health issues with residents, but some people will not experience issues above those levels. The AEGL-1 (600 ppb over 30 minutes) is a level where the “general population, including susceptible individuals, could experience notable discomfort.” That does not mean that every individual will experience discomfort.

⁶ https://scdhec.gov/sites/default/files/media/document/NewIndy_PCAOrderLetter.pdf.

Third, New Indy has not reported exceeding the health-based levels required by the Emergency Order since September of 2021. This may be a reason why at least some of the commenters have no adverse health impacts.

Comment Topic 4: Wind impacts the severity of odor and health impacts (“fate and transport” 42 comments)

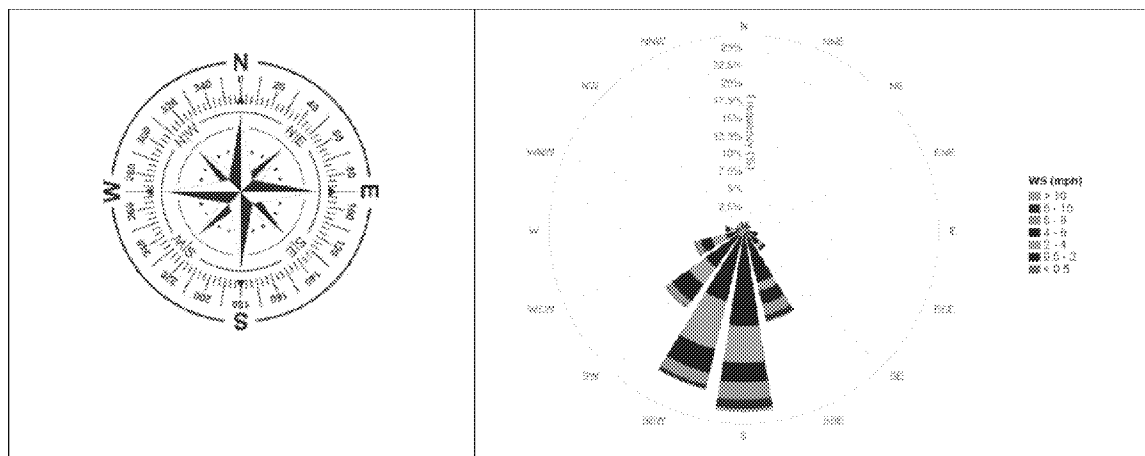
About 42 times, the comments noted that wind direction affects the severity of odors or emissions that cause health impacts. For example:

- You can even predict when it will be bad by looking at the wind directions from the plant area.
- It all depends on which way the wind is blowing the poison air from the plant.
- If the wind direction is from New Indy our plans are cancelled.

Response:

These comments do not require withdrawing from the proposed Consent Decree because the EPA took wind direction into account. It is a known and common phenomenon that air pollution can be moved by wind and other atmospheric conditions. For that reason, the EPA Emergency Order, and the proposed Consent Decree, require New Indy to not only monitor emission levels, but also to simultaneously monitor the meteorological data, including wind direction. New Indy is required to, and does, post the results of the sampling including the wind direction. That information is available on the DHEC website and on the New Indy website (<https://newindycatawba.com/>). New Indy reports the wind data in a “wind rose,” which shows prevailing wind speed and direction. A randomly selected example is pasted below to illustrate.

Wind rose – Shows the direction the wind is coming from, the monitoring station being at the center of the rose.



The EPA and DHEC continue to investigate both New Indy and other potential sources of odors and emissions that cause health impacts. Meteorological information can continue to inform those investigations. The proposed Consent Decree does not preclude the EPA or DHEC from such investigations.

Comment Topic 5: Quality of life and health effects worsened after New Indy ownership (87 comments)

About 87 times the comments stated that quality of life and health effects worsened after New Indy took ownership of the Facility. For example:

- Our quality of life was terrific until New Indy's new management began poisoning our air.
- I am a long time resident in the Indian Land area of Fort Mill, SC and have lived through various companies running the Catawba paper mill. Never have we experienced anything like what began when New Indy purchased the paper mill. I remember shortly after they started production with failing and inadequate equipment waking up in the middle of the night with burning eyes, sore throat, and an overpowering smell unlike anything in the prior 35 years of living here.
- We have lived in this area for the past 12 years. The air quality was always good, however since the early part of 2021 we have noticed poor air quality and a smell of rotten eggs in the air. This occurred at the time of New Indy opening their facilities within five miles of our home.

Response:

These comments do not require withdrawing from the proposed Consent Decree because they involve generalized observations about the past and do not speak directly to the proposed Consent Decree or its terms. Even though impacts worsened after New Indy ownership, existing monitoring data demonstrates that the H₂S emissions are currently controlled to well below health-based levels.

These comments are consistent with other information that the H₂S emissions from the New Indy Facility drastically increased in approximately December 2020 through June of 2021. The evidence of H₂S concentrations above health-based levels led the EPA to issue its Emergency Order, and the United States to file this civil action. Since September of 2021, however, New Indy has not reported any exceedances of the health-based levels established by the Emergency Order. The proposed Consent Decree will make it a violation for New Indy to exceed these health-based levels moving forward.

As explained above, the drastic increase in H₂S emissions from the New Indy Facility followed the Facility's transition to producing non-bleached paper products and redirecting all foul condensate to the wastewater treatment system. However, the wastewater treatment system was not properly functioning at the time due to a significant buildup of solids in the ASB and other parts of the system. This buildup reduced its treatment capacity by decreasing the ASB's volume and causing numerous aerators to fail, leading to high emissions of H₂S. Since then, New Indy has taken a number of measures to address conditions in the wastewater treatment system. (Declaration of Denis Kler). Existing monitoring data demonstrates that the H₂S emissions are currently controlled to well below health-based levels. As for other odors, or other compounds that continue to impact citizens, the proposed Consent Decree does not stop the EPA or DHEC

or private citizens from continuing to investigate whether separate enforcement action is appropriate to address these concerns.

Comment Topic 6: New Indy has already improved the odor since the Spring of 2021 (32 comments)

About 32 times the commenters stated that New Indy has improved the air emissions since the Spring of 2021. For example:

- Has it gotten better since Spring of 2021? Absolutely. It is not at the strength that it was in the Spring of 2021, but can still be quite a nuisance.
- I would like to say smell has almost completely gone away and I rarely smell it when I ride near the mill now. I haven't smelled it at my home in Months!
- I believe that the New-Indy mill had some issues with the smell when they were finally converted to brown paper back in 2020 but that is no longer the case.

Response:

These comments do not require withdrawing from the proposed Consent Decree because they are consistent with the fact that the EPA issued its Emergency Order and New Indy began reducing H₂S in the Summer of 2021. The purpose of the Emergency Order and the proposed Consent Decree was, and is to continue to keep H₂S emissions under control, especially as compared to the high levels EPA measured in the Spring of 2021. These comments support continuing to control H₂S.

III. INJUNCTIVE RELIEF

The second most popular overarching category of comments had to do with the injunctive relief required by the proposed Consent Decree. Approximately 131 commenters stated that the injunctive relief required by the proposed Consent Decree was inadequate in general and approximately 67 commenters asked the Department and the EPA to withdraw the proposed Consent Decree because of this. The more specific topics raised within this category had to do with the following: 1.) the injunctive relief only addressing H₂S (106 comments), 2.) the number and location of monitors (79 comments), 3.) other aspects of the monitoring program (37 comments), 4.) various additional remedies (including wastewater treatment plant upgrades (99 comments), 5.) whether New Indy should reduce emissions or shut down (92 comments), and 6.) whether New Indy should report exceedances as soon as possible and potential exceedances to the Local Emergency Planning Committee. These are addressed more specifically below.

Comment Topic 7: The injunctive relief only addresses H₂S

Many comments touched on the fact that the injunctive relief only addresses H₂S and does not require New Indy to monitor or control for other pollutants. For example:

- The proposed Consent Decree is woefully inadequate and materially flawed in the following ways: It mistakenly focuses only on hydrogen sulfide;

- It's also unclear why H₂S is the only chemical being targeted by the investigation when other toxins have been identified and are causing issues.
- There are far more toxic compounds that have been confirmed or highly suspected that have regulatory compliance restrictions which have a high likelihood of not be met including but not limited to Methyl Mercaptan, Dioxins, Lead, Mercury, Methanol, and Furrins which have not been adequately investigated.
- The noxious, sickening smell lately of a sweet cake urinal is beyond descriptive. it has changed from the rotten egg odor for months now. New Indy needs to be monitored for every chemical that is being emitted from their plant. Using more chemicals to "mask" their issues is putting a bandaid over a gaping wound.

Response:

These comments do not require withdrawing from the proposed Consent Decree because monitoring for, and controlling, constituents other than H₂S is not required to address the imminent and substantial endangerment that is the subject of this action. The EPA's CAA Section 303 civil action in this matter is based specifically on its finding of an imminent and substantial endangerment from excess emission of H₂S. (Order at 45; Complaint ¶¶ 1 and 28). Section 303 of the CAA is a discretionary, not a mandatory, authority that allows the EPA to act upon information it has in the moment and to take a targeted approach to deal with an emergency-type situation. It does not require the EPA to address all possible issues in one comprehensive action, nor to address the most toxic or dangerous element first. This way, the EPA is free to act as soon as it has evidence that a pollutant is "causing or contributing to" an imminent and substantial endangerment. It does not have to wait and conduct a comprehensive investigation to address all possible pollutants at the same time. For the reasons described below, the EPA reasonably chose to focus its efforts on addressing excess H₂S emissions as a first step in getting the crisis under control. This does not prevent the EPA from using its CAA Section 303 authority to address other pollutants at a later time should it receive evidence supporting further action. The EPA's investigation of New Indy continues. (See January 21, 2022 CAA 114 Request)

Although the EPA began monitoring around New Indy for a suite of pollutants, H₂S quickly became the pollutant of concern based on the EPA's knowledge of pulp and papermill air emissions generally,⁷ as well as the site-specific information being collected at the time. (Declaration of Denis Kler). Specifically, the majority of citizen complaints described the offensive odor as a "rotten-egg" smell (the characteristic odor of H₂S), the EPA Inspectors' 4-gas monitor alarms for H₂S went off multiple times during the EPA's April 2021 inspection, and the Geospatial Measurement of Air Pollution (GMAP) monitoring data detected elevated levels of H₂S on and around the Facility property. (Declaration of Denis Kler). At the time that the EPA filed the Complaint in this action, New Indy had reported to EPA multiple instances of H₂S

⁷ H₂S is recognized as one of the largest components of TRS gases produced by pulp and paper mills. See EPA, *Draft Guidance Document: Control of TRS Emissions from Existing Kraft Pulp Mills*, 2-3 (1978); and EPA, *Kraft Pulping: Control of TRS from Emission from Existing Mills*, 2-3 (1979).

concentrations at its fenceline exceeding the health-based concentration levels that the EPA had established in its Emergency Order. (Complaint □ □ 18-20).

The Putative Class cites to Table 6-1 in New-Indy's Corrective Action Plan as evidence that H₂S makes up only 10% of the total reduced sulfur (TRS) emitted from the wastewater treatment plant. (Putative Class Comments at 12). The EPA is unaware of the basis for the information presented in Table 6-1. (Declaration of Denis Kler). Regardless, it conflicts with the results of New Indy's June 21-27, 2021 emission testing to comply with DHEC's May 7, 2021 Order (see Section 2 of Test Report, dated July 21, 2021) and the results of the wastewater testing New Indy conducted in June of 2021 to comply with DHEC's May 7, 2021 Order and the EPA's June 2, 2021, CAA Section 114 information request (see Section 3.3 of Initial Performance Test Report, dated August 2021). (Declaration of Denis Kler). According to these testing reports, H₂S had by far the largest concentration of the four TRS constituents contained in New Indy's process condensate wastewater at the time and would therefore be the largest component of the TRS constituents being emitted from the ASB.⁸ (Declaration of Denis Kler).

The EPA also focused on H₂S knowing that, to the extent that other TRS constituents, including methyl mercaptan are contributing to the odor or health effects being complained of, the corrective actions required by the proposed Consent Decree will have the effect of reducing emissions of all TRS constituents, including methyl mercaptan. (Declaration of Denis Kler).

Comment Topic 8: Number and location of H₂S monitors

Approximately 79 commentators argued that the number and location of H₂S monitors are insufficient. For example:

- The complaints are coming from a 300 square mile area yet New Indy is ONLY required to monitor a 30 square mile area.
- New Indy is only required to have monitors on their fenceline...but there are no monitors on the [East], Northwest or Southwest fenceline.
- EPA regulations for a petroleum oil refinery's fenceline monitoring for a facility as large as New-Indy, requires 18 monitors.

Response:

These comments do not require withdrawing from the proposed Consent Decree because evidence shows that the number of and location of the monitors is sufficient. First, it should be noted that the proposed Consent Decree requires the three fenceline monitors as injunctive relief for the EPA's CAA Section 303 civil action. New Indy's monitoring in the community, on the other hand, was required by separate authorities: first DHEC's May 7, 2021 Order (which

⁸ See Weston Solutions Inc., Pulp Dryer, No.3 Paper Machine Vents, No. 2 and 3 Smelt Dissolving Tank Vents, and No. 1 and 2 Combination Boilers Emission Test Report 2-15 (July 21, 2021); Initial Performance Test Report Condensate Collection and Treatment, table 3-1 (August 2021)

remains in effect) and the EPA's May 13, 2021 CAA Section 114 Request, which required community monitoring for a one-year period, which has since concluded.

Regarding the number of fenceline monitors, the EPA chose this number while acting in the context of an emergency. The EPA knew that New Indy already had three H₂S monitors in its possession, and that additional H₂S monitors would be difficult to obtain quickly given supply chain issues. (Declaration of Denis Kler). Accordingly, the 303 Order required New Indy to monitor H₂S using those three monitors as a start. (Declaration of Denis Kler). After the EPA issued the 303 Order but before negotiating the proposed Consent Decree, the EPA analyzed New Indy's modeling data submitted to DHEC in August and October of 2021 and confirmed that the three monitors, as located, was a sufficient number to obtain a representative sample of the maximum H₂S concentrations present at New Indy's fenceline, and that additional fenceline monitors were not needed to characterize the maximum H₂S concentrations resulting from New Indy's emissions. (Declaration of Rick Gillam).

Arguments that New Indy should be required to install at least 18 monitors along its fenceline are based on a non-analogous comparison between the petroleum refinery sector and the facts of this case. (*See* Declaration of Rick Gillam). First, the goal of the fenceline monitoring workpractice requirement in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Petroleum Refinery Sector is to detect and mitigate benzene leaks from the many potential sources of fugitive emissions at refineries. (Declaration of Rick Gillam). Refineries include a wide range of processes and equipment distributed throughout the facility footprint that could potentially leak, so a more comprehensive fenceline monitoring work practice is needed to increase the likelihood that any leaks are detected. (Declaration of Rick Gillam).

In contrast, the goal of the H₂S monitoring program required by the EPA's 303 Order and the proposed Consent Decree is to make sure that the Facility's wastewater treatment system is not emitting H₂S at elevated levels that would cause or contribute to an imminent and substantial endangerment. (Declaration of Rick Gillam). It is not cost-effective to require H₂S monitors at short intervals around the entire Facility border when the EPA is confident of the location of potential emission points and, thus, where the maximum fenceline concentrations of H₂S are likely to occur. (Declaration of Rick Gillam). Second, the fenceline monitoring required by the refinery NESHAP utilizes passive samplers that measure one sample concentration per two-week period, which would not be appropriate in this case where health-based levels can be exceeded as a result of short-term elevated concentrations. (Declaration of Rick Gillam). By contrast, the H₂S monitors in this case collect data continuously and report concentrations over a one-minute period. (Declaration of Rick Gillam). This is a significant distinction, as continuous fenceline H₂S and meteorological monitoring provide much more detailed time resolution than passive fenceline monitoring. (Declaration of Rick Gillam).

Regarding the three fenceline monitoring locations, the EPA selected these based on where it expected the highest concentration of H₂S to occur, given its knowledge of the Facility, results of the April 2021 inspection, the GMAP monitoring, and wind patterns. (Declaration of Denis Kler). After the EPA issued the 303 Order, New Indy requested to relocate one monitor from the location along the northern boundary of the ASB, as originally proposed in the 303 Order, to along the New-Indy property boundary to the northeast, along the Catawba River (subsequently

identified as monitor #3). (Declaration of Denis Kler). New Indy requested this alternative location to provide a more representative measure of H₂S emissions leaving mill property and so that the monitor would not interfere with, or be impacted by, regular ASB maintenance and on-going fiber removal. (Declaration of Denis Kler). The EPA approved the request. (Declaration of Denis Kler). As mentioned above, after the EPA issued the 303 Order and finalized the three fenceline monitoring locations, but before negotiating the proposed Consent Decree, it analyzed New Indy's modeling data, which confirmed that these locations are where the maximum concentrations of H₂S are most likely to occur. (Declaration of Rick Gillam). The modeling considers the magnitude and location of emissions sources, topography and meteorology, including wind speeds and directions, for determining the areas of maximum predicted concentrations. While the accuracy of New Indy's air dispersion modeling is still under review by DHEC and the EPA, the modeling is adequate for purposes of determining where maximum concentrations of H₂S are likely to occur. (Declaration of Rick Gillam). Future corrections to the model may change the degree of maximum H₂S concentrations predicted but are not likely to significantly impact the location of where they will occur. (Declaration of Rick Gillam).

The EPA conducted a limited audit of the fenceline monitors in August 2021, and an in-depth review of the onsite Quality Assurance Project Plan (QAPP) in April 2022. (Declaration of Kler). Based on the results of these investigations, the EPA required New Indy to modify the location of where fenceline monitor #3 is located to comply with siting criteria and subsequently required New Indy to make specific improvements to its onsite QAPP to improve quality data moving forward. (Declaration of Kler).

The offsite monitoring was originally required by DHEC's May 7, 2021 Order. Accordingly, DHEC has taken the lead in overseeing this monitoring program, including the number and location of the community monitors.⁹ The concentrations of H₂S measured at the community monitors have always been relatively low and have never approached the health-based levels established in the EPA's Emergency Order.¹⁰ Additional monitors sited farther away from the Facility are unlikely to measure any higher H₂S concentrations, as the farther away from the source (the Facility), the more dispersed (less concentrated) the H₂S should become. (See Suh Report). While odor complaints have come from a larger area than where the community monitors are located, this is to be expected, given the low odor threshold of H₂S. (Declaration of Denis Kler).

Comment Topic 9: Other aspects of the monitoring program

Approximately 37 commentators argued that the monitoring program required by the proposed Consent Decree is inadequate for reasons other than just the number and location of monitors, including seven who felt the fenceline H₂S concentration levels established by the proposed Consent Decree were too high or not stringent enough. For example:

⁹ See DHEC, Air Monitoring for Hydrogen Sulfide, <https://scdhec.gov/environment/environmental-sites-projects-permits-interest/new-indy-odor-investigation/air-monitoring-hydrogen-sulfide>.

¹⁰ See *id.* and New Indy, Daily Reports, <https://newindycatawba.com/daily-reports/>.

- [s]hort term, temporary adverse health effects begin at MUCH lower levels,”
- “the concentration limits should be based on a 15-minute weighted average like the Occupational Safety and Health Administration (OSHA) H₂S limits.”
- Furthermore, self reported monitoring is a joke. A company who has been guilty of denying claims made against them and continually proven otherwise should not be allowed to monitor their own toxic waste.
- We also need the consent decree to offer clarification on who is going to report the monitoring once the 303 order is closed. Will it be monitored by New Indy only? Will this data be reported on the New Indy Catawba website, as it is now?

Response:

These comments do not require withdrawing from the proposed Consent Decree because the monitoring program is based on health-based levels that are appropriate for the circumstances and includes protocols to ensure that the quality objectives are achieved. The H₂S concentration levels established in the proposed Consent Decree (70 ppb/7 days and 600 ppb/30 minutes) are adequate and appropriate in this case. As discussed above in Comment Topic 1, because there is no federal ambient air quality standard for H₂S, the EPA based the fenceline H₂S concentration levels in its Emergency Order on well-established H₂S health-based guidelines to protect human health. The proposed Consent Decree includes these same health-based levels.

Regarding whether New Indy can be “trusted,” the EPA does not agree that a third party is required to oversee or be in charge of the monitoring program going forward. The proposed Consent Decree requires New Indy to maintain and operate the H₂S monitoring program in accordance with the June 2021 EPA-approved QAPP, and any subsequently EPA-approved versions. The purpose of a QAPP is to document the specifications for implementing a project design and to ensure that the quality objectives are achieved for the project.¹¹ The requirements of the onsite QAPP, as approved, together with the EPA oversight, are sufficient to meet data quality objectives.

Regarding whether the proposed Consent Decree addresses who is going to monitor after the 303 matter is closed and how those monitoring results would be made public, this issue was considered and addressed in Appendix A to the proposed Consent Decree. Appendix A requires New Indy to continue to monitor for H₂S and to report the data on its website daily during the life of the proposed Consent Decree. (Appendix A to proposed CD □ II.b.). New Indy must apply for and obtain a state permit that requires it to continue to monitor for H₂S at the fenceline before terminating the proposed Consent Decree so that this requirement will live on after the proposed Consent Decree is terminated. (Appendix A to proposed CD □ VI.a.ii).

Comment Topic 10: Various additional remedies

A number of comments argued that New Indy should be required to implement additional remedies beyond what is required by the proposed Consent Decree. These remedies included

¹¹ See <https://www.epa.gov/sites/default/files/2015-06/documents/g5-final.pdf>

installing a new or second steam stripper and/or making various upgrades to the wastewater treatment plant (99 comments). Specific wastewater treatment plant upgrades included but were not limited to: 1.) separate the wastewater from the clarifier sludge entering the equalization stabilization basin, 2.) install a second, and perhaps a third (depending on size) clarifier, 3.) line the existing ASB and add a second ASB to provide backup capacity, 4.) install two secondary clarifiers between the ASB and the No. 1 Holding Pond, 5.) install on its post aeration tank a sulfide monitoring system that controls both the aerators and chemical feed pumps to add oxygen and sulfide-destroying oxidant, and 6.) install a second post aeration tank. A number of other comments in this category also argued that New Indy should be required to conduct a toxicological assessment as part of the injunctive relief. Various comments were more general, referencing a need for more ambient air monitoring, measurements of the amount and source of malodorous and toxic emissions in the area, or asking for the results of the Emergency Order's toxicological assessment.

Response:

These comments do not require withdrawing from the proposed Consent Decree because the proposed Consent Decree requires New Indy to take sufficient corrective actions to address the imminent and substantial endangerment that is the subject of this action. (Declaration of Denis Kler). New Indy is currently operating with only one steam stripper without measuring any exceedances of the health-based H₂S levels at its fenceline.¹² The proposed Consent Decree requires New Indy to maximize the use of this steam stripper and to take various measures designed to ensure that New Indy's wastewater treatment system is capable of adequately treating any foul condensate that is not sent to the steam stripper for treatment.

Specifically, Appendix A of the proposed Consent Decree requires New Indy to operate the steam stripper at all times during which unbleached kraft pulp is being produced at the mill and foul condensate is being generated other than for periods of scheduled and unscheduled steam stripper downtime. New Indy must also maintain and operate a system to chemically treat the unstripped foul condensate before discharging it into the ASB. This system must be capable of continuously measuring the oxidation reduction potential (ORP) of the foul condensate and automatically controlling the dosage of a chemical oxidant to maintain a healthy ORP before discharging the foul condensate to the ASB. ORP is a measure of the ability of a lake or river to cleanse itself or break down waste products. The system must also be capable of treating the maximum amount of foul condensate produced when the steam stripper is down.

Appendix A of the proposed Consent Decree further requires New Indy to maintain and operate the wastewater treatment system in a manner consistent with safety and good wastewater treatment and air pollution control practices, including but not limited to periodic dredging of the ASB, excavation of the equalization stabilization basin, operation and maintenance of the aerators in the ASB, and chemical strategies to inhibit the generation of H₂S, among others. It also requires New Indy to ultimately install, maintain, and operate a more permanent cover and carbon filtration system on the post aeration tank in accordance with an EPA-approved plan. Together, these measures are designed to ensure that excess H₂S is not generated upstream of the

¹² See New Indy, Daily Reports, <https://newindycatawba.com/daily-reports/>.

post aeration tank and that any excess H₂S that reaches or is generated in the post aeration tank is not emitted to the atmosphere. (Declaration of Denis Kler). All of these measures combined are designed to ensure that the conditions at the New Indy Facility do not return to those that led to the imminent and substantial endangerment caused by excess H₂S emissions. (Declaration of Denis Kler).

Regarding New Indy conducting a toxicological assessment as part of the injunctive relief, many of these comments directly, or indirectly, referenced Paragraph 52.h. of the EPA's 303 Order. The comments claimed that New Indy had not yet complied with this paragraph, that the EPA had not enforced this paragraph, that New Indy should be required to conduct a toxicology study, and/or that New Indy should make the toxicology study public.

Paragraph 52.h. of the EPA's 303 Order states:

“.... Respondent shall, after consulting with a toxicologist, submit to EPA in writing a long-term plan that identifies: (i) how Respondent's continued operations will avoid the endangerment identified by EPA in this Order...”

Without conceding whether a toxicological assessment conducted by New Indy is/was a necessary component of addressing the ISE, the EPA notes that New Indy did, in fact, consult with a toxicologist (Christopher M. Teaf, Ph.D.) and did submit a “long-term plan” pursuant to Paragraph 52.h. of the 303 Order.¹³

Regarding the long-term plan required under Paragraph 52.h. of the 303 Order, the DHEC separately required New Indy to develop and submit a Corrective Action Plan (CAP) to DHEC. New Indy submitted the CAP to the EPA to for purposes of meeting the requirements of Paragraph 52.h. of the Emergency Order. New Indy has provided three versions of the CAP, the initial CAP on June 15, 2021, the first revised CAP on June 25, 2021, and a second revised CAP on July 12, 2021.

The various additional remedies requested by the commentors either go above and beyond what is required, or what EPA has authority to require, to address the imminent and substantial endangerment.

Comment Topic 11: New Indy should be required to cut its production.

About 92 comments argued that New Indy should be required to cut its production. For example:

¹³ The toxicologist's letter to New Indy is dated June 3, 2021 from Dr. Teaf. As its “long-term plan,” New Indy submitted the Corrective Action Plan that was separately required by the South Carolina Department of Health and Environmental Control (SC DHEC)'s May 7, 2021, Order. The original and revised versions of the CAP are available through DHEC's website. <https://scdhec.gov/environment/environmental-sites-projects-permits-interest/new-indy-odor-investigation/new-indy-weekly-update-reports>

- The community of over 1900 on the class action lawsuit, almost 800 on the petition, in less than 5 days, to shut down New-Indy are requesting the doors to New-Indy be closed for 6 months while they purchase and install adequate stripping equipment, but still dredge the lagoons and operate all aerators continuously during this time of closure. This would help clean up New-Indy's mess, give the community a break from the toxic air and ensure that when production does start back it will be better than it is currently.
- The production and monitoring methods need to be greatly improved along with increased oversight. Until then, perhaps production should be reduced to a more manageable level.
- Production should be halted if the issue cannot be resolved immediately; the company has been given more than a year to resolve already.

Response:

These comments do not require withdrawing from the proposed Consent Decree because a mandate to New Indy to cut production is not required to address the imminent and substantial endangerment. (Declaration of Denis Kler). As mentioned above, New Indy is currently operating without measuring any exceedances of the health-based H₂S levels at its fenceline. (Declaration of Denis Kler). The proposed Consent Decree requires New Indy to take a number of specific actions designed to ensure that the conditions at the New Indy Facility do not return to those that led to the imminent and substantial endangerment caused by excess H₂S emissions. (Declaration of Denis Kler). If future information calls for adjustments in production to deal with non-H₂S issues, the proposed Consent Decree reserves the United States' right to take such actions.

Comment Topic 12: Reporting Requirements

In its comments, DHEC stated that it believed the "reporting of exceedances of the 30 minute or 7-day Fence Line Limits should be as soon as possible, but no later than 24 Hours after the event detection" and recommended that New Indy be required to notify the Local Emergency Planning Committee (LEPC) immediately of any potential exceedance or upset condition. At least one commentor felt that New Indy should be required to post the monitoring results every day, regardless of holidays.

Response:

These comments do not require withdrawing from the proposed Consent Decree because the EPA believes the reporting requirements in Paragraph II.b-d. of Appendix A are adequate. These Paragraphs require New Indy to post the results of its monitoring on its website daily, except for holidays, in which case New Indy would be required to post the results the next day. The proposed Consent Decree also requires New Indy to notify the EPA of any exceedance within 24 hours of the end of the averaging period, and notify the EPA within 24 hours of an occurrence of any upset in mill operations that could reasonably be expected to result in an exceedance. While the proposed Consent Decree does not require New Indy to notify the LEPC, it does not prohibit New Indy from doing so.

IV. SPECIFIC CONSENT DECREE LANGUAGE

Comment Topic 13: Minimum detection limits and permit requirements

The EPA received approximately 50 comments about the specific language in the proposed Consent Decree, at least two of which had to do with the minimum detection limit (MDL) for monitors and the permit requirements outlined in Appendix A. These two comments were:

- The minimum detection limit listed in the Decree for fenceline monitoring is not consistent with the requirements in the currently approved QAPP. The current model fenceline monitors should be maintained, providing an MDL of 0.4 ppb. Additionally, a footnote should be required specifying what the instrument MDL is, as this impacts what is currently reported as “zero;” and
- In Appendix A on page 5, there may be an incorrect reference. Paragraph VI.a.i of Appendix A states that the permit should incorporate a condition to require the unstripped condensate to be chemically treated before discharge to the ASB as described in paragraph I.a. However, paragraph I.a. only outlines the provisions for the stripper operation and not the chemical treatment of the unstripped condensate. Please correct the reference to clarify the intent (Paragraph I.a., I.b., or both I.a. and I.b.).

Response:

These comments do not require withdrawing from the proposed Consent Decree because EPA and New Indy have agreed to amend the proposed Consent Decree to address them. In a “First Amendment to Consent Decree,” the EPA and New Indy agreed to modify the MDL of 10 ppb originally required by Paragraph II.a. of Appendix A of the proposed Consent Decree to 0.4 ppb., which is the MDL of the monitors New Indy currently has installed at its fenceline. Additionally, the First Amendment revises Paragraph V.I.a.i. of Appendix A to address a typo in the cross-reference included in the original version. Paragraph V.I.a.i. of Appendix A now incorporates the requirements of both Paragraph I.a. and I.b., as was originally intended.

Comment Topic 14: Duration of Injunctive Relief Terms

At least four comments on the specific proposed Consent Decree language had to do with the duration of injunctive relief requirements (including the deadlines in Appendix A, Paragraph V.) or the proposed Consent Decree itself. For example:

- Only three years for NI to go back to the old way? What happens if they start violations again? Are we back to square one? This needs to be for 10 years. This shows that EPA is looking out for the community.
- Appendix A, V. a. The timeframe provided in the proposed decree is quite generous considering the thousands of complaints by citizen and the fact that this type of construction should have occurred prior to operating this facility. The 160-day timeframe must be changed to 90 days.

- Appendix A, V. b. The timeframe provided in the proposed decree is quite generous considering the thousands of complaints by citizen and the fact that this type of construction should have occurred prior to operating this facility. The 365-day timeframe must be changed to 120 days.

Response:

These comments do not require withdrawing from the proposed Consent Decree because the deadlines imposed by the proposed Consent Decree are appropriate. The deadlines in Appendix A, Paragraph V. have to do with installing, maintaining, and operating a containment system to prevent any uncontrolled black liquor overflows or releases from reaching the ASB. The EPA believes the deadlines are reasonable, given that New Indy has already taken intermediate precautionary measures to prevent black liquor releases from reaching the ASB. (Declaration of Denis Kler). Regarding the duration of the injunctive relief requirements, the proposed Consent Decree requires New Indy to obtain a state permit that incorporates the key injunctive relief terms so that they will live on after the proposed Consent Decree is terminated. *See* proposed Consent Decree, Paragraph 22 and Appendix A, Paragraph V.I. And as for the length of the proposed Consent Decree itself, New Indy must complete all of the compliance requirements in Section V. of the proposed Consent Decree and operate for at least three years without exceeding the fenceline H₂S concentration levels before it is eligible to request that the proposed Consent Decree be terminated. *See* Section X.V.II of the proposed Consent Decree. The EPA believes this is more than enough time for New Indy to demonstrate that the imminent and substantial endangerment that is the subject of this action has been fully addressed. It should be noted that no other pulp and paper mill is required to monitor for H₂S, or to operate below specific concentrations of H₂S, at its fenceline. (Declaration of Denis Kler).

Comment Topic 15: Standard consent decree language

The remaining comments on specific proposed Consent Decree language had to do with standard language that is typical of EPA consent decrees, for example, language about the Defendant admitting liability, the inclusion of Dispute Resolution terms, the time for notifying the United States of a violation of the proposed Consent Decree, the requirement that Defendant notify the United States if its performance under the proposed Consent Decree might “pose an immediate threat to the public health or welfare or environment...”, and Paragraph 67, which states that the United States does not warrant that compliance with the proposed Consent Decree will result in compliance with the CAA. Examples of these comments include:

- Page 4 - Defendant does not admit any liability to the United States or others arising out of the transactions or occurrences alleged in the Complaint. JMO [sic] — New Indy needs to take ownership of this. EPA has proven that the toxic smell was from their plant.
- Please rescind the proposed Consent Decree. Per paragraph 67 of the decree, it does not guarantee to bring New-Indy into compliance.
- If Defendant elects to invoke Dispute Resolution as set forth in Paragraphs 16 or 18, Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 51 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the

applicable decision. JMO [sic]— If they can dispute these resolutions then we are back to waiting for NI to fix the issue?

Response:

These comments do not require withdrawing from the proposed Consent Decree because they have to do with standard provisions that have been approved by numerous courts in other cases. These standard provisions serve various important purposes that are common across various settlements. In the interest of consistency and fairness, it is the United States' practice to adhere to such model language unless case specific circumstances warrant a deviation, and in this case, none did. As to the specific comments: almost every CAA consent decree includes a general denial of liability; and dispute resolution has proven to be a cost-effective way to bring issues to resolution without needing to have a federal judge decide the matters at issue.

V. CIVIL PENALTY

This section relates to comments about the civil penalty.

Comment Topic 16: The civil penalty is too low, and related issues.

About 89 comments suggest that the civil penalty is too low. Many consider the penalty a “slap on the wrist” and state that \$1 million is the profit that New Indy makes per day of operation. A small subset of those 89 comments state that the civil penalty money should be given to individuals who have suffered adverse impacts from New Indy's emissions. Approximately two others of the 89 state that Kraft Industries or Mr. Kraft himself are wealthy so \$1.1 million is insufficient. For example:

- “The million dollar fine approach is a bad joke and an insult to the community. Let's start at \$100 million.”
- “The fine of \$1.1MM is a ridiculously SMALL amount considering that is ~1 days worth of production to this plant and a ROUNDING ERROR to the parent company. A fine needs to really make management sit up and take notice.”
- “A million dollar fine to NEW INDY is literally chump change! A million dollars in revenue is made in ONE DAY at that plant! Fines need to be heavier to ensure the company thinks twice before they continue to pollute their neighbors! A fine of a million dollars a day is more appropriate.”
- “These fines should be used to repay civilians like me through improvements to our outdoor spaces and living spaces, which have been unjustly compromised.”

Response:

The United States believes that the penalty amount is appropriate, and these comments do not require withdrawing from the proposed Consent Decree.

Applicable Laws. Under Section 303 of the CAA (“Emergency Powers”), when a pollution source “is presenting an imminent and substantial endangerment” to public health or welfare, the

EPA has authority to issue administrative orders to protect public health or welfare or the environment. Also, the United States may file a civil action for an injunction under those circumstances. 42 U.S.C. § 7603. *Id.* If the polluting entity fails to comply with an administrative order issued under Section 303, the United States may sue for a civil penalty. 42 U.S.C. § 9613. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), allows a civil penalty of up to \$102,638 per violation of a Section 303 administrative order.¹⁴ 42 U.S.C. § 7413(b) (\$25,000/day) as amended and inflated at 40 C.F.R. § 19.4.

But, courts do not simply enter judgment for the maximum penalty, because the CAA provides factors for consideration in deciding whether to apply the maximum or something less:

In determining the amount of any penalty to be assessed under this section . . . the court . . . shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

42 U.S.C. § 7413(e).

When a penalty is assessed by a court under the CAA Section 7413, it is to be deposited into the treasury. The Miscellaneous Receipts Act requires that a "person having custody or possession of public money . . . shall deposit the money without delay in the Treasury or with a depository designated by the Secretary of Treasury under law." 33 U.S.C. § 3302(c)(1). Once money has been deposited in the United States Treasury, it can only be spent in accordance with Congressional appropriations. U.S. Const. art. I, § 9, cl. 7 ("No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . .").

The Penalty in this Case. Here, the EPA Administrative Emergency Order was issued on May 13, 2021, and required New Indy to meet certain concentrations at the "fenceline," specifically New Indy could not exceed 70 ppb over a seven-day average nor 600 ppb on a 30-minute average. These numbers are not required by any CAA regulation or permit, but are based on the EPA's judgment in relying on health-based guidelines for H₂S.

New Indy complied with the operational terms of the EPA Order, including submitting monitoring results and operating plans, and consulting with a toxicologist. But, in the days immediately following the EPA's Emergency Order, New Indy frequently measured H₂S

¹⁴ This number is adjusted for inflation from the original number in the CAA: the original CAA provided for a civil penalty of up to \$25,000 per violation at 42 U.S.C. § 7413(b), but under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74) November 2, 2015, EPA was instructed to adjust the civil penalty for inflation. EPA's inflation-adjusted amounts are set out at 40 C.F.R. § 19.4, and for violations of violations that occurred after November 2, 2015, where penalties were assessed on or after December 23, 2020, but before January 12, 2022 the maximum penalty is \$102,638 per violation.

concentrations at its fenceline above the health-based levels established by the EPA's Order. By June of 2021, New Indy had stopped reporting exceedances of the numerical thresholds, except for an incident in September. In August of 2021, the EPA discovered that New Indy had failed to site one of its fenceline monitors in accordance with its QAPP.

In all, the EPA counted 41 times when New Indy exceeded fenceline levels established by the EPA Order and one instance of failing to comply with the QAPP required by the EPA Order. Applying the CAA penalty analysis, 42 violations multiplied by the maximum penalty of \$102,638 per violation yields a total maximum civil penalty of \$4,310,796.

The proposed Consent Decree requires a civil penalty of \$1.1 million, which is about 25% of the maximum amount of \$4.3 million. The discount is based on several factors. First, the violations are quite "serious," so a significant penalty of over a million dollars is appropriate. Second, New Indy has been cooperative in largely complying with the EPA Order. New Indy also cooperated by agreeing to a judicial injunctive "Consent Order" that required it to continue to comply with the monitoring and emission thresholds without the need for the United States to proceed to trial. New Indy also agreed to the proposed Consent Decree and penalty without protracted litigation. Finally, one must consider litigation risks in settling any case, because the judge may not award more than 25%, and indeed could award less. For these reasons, the \$1.1 million penalty is appropriate.

Other penalties not in this case. In this case, the only alleged violation is violating the EPA's Emergency Order on 42 occasions, by exceeding the fenceline requirements of the 303 Order and by failing to site one of its fenceline monitors in accordance with its QAPP. The United States has not alleged that New Indy failed to obtain any type of permit, or violated a permit, or violated any specific CAA regulation, nor alleged any violations of other environmental requirements such as those to control water pollution. The proposed Consent Decree does not prohibit the EPA from taking future enforcement actions for such violations, if the United States obtains evidence of violations sufficient to support a claim. Such future claims could include claims for civil penalties. Also, DHEC could file claims for penalties. Private citizens, or public interest environmental groups could seek to do so. The proposed Consent Decree does not prohibit such actions. In fact, on June 29, 2022, DHEC and New Indy entered into a consent order to resolve alleged violations by New Indy of the South Carolina state water pollution control requirements and permits related to this case, under which New Indy must pay a civil penalty of \$129,360 for its water related violations.

Specific sub-comments.

For those comments that call for the civil penalty to be directed to individuals, as explained above, that is prohibited by the Miscellaneous Receipts Act. For those comments that call for high penalties, such as \$1 million per day or starting at \$100 million, such amounts would be prohibited under CAA Section 113(b), which only provides for \$102,638 per day of violation. The maximum penalty for all 42 violations is \$4.3 million. For the comments that speak to New Indy making profits of \$1 million per day, the CAA requires consideration of "the size of the business," which is a factor that calls for keeping the penalty over \$1 million. The government took this factor into account when insisting on a penalty over \$1 million.

For the comments about the parent company, the United States only alleged that New Indy caused an endangerment and violated the EPA Emergency Order. The EPA did not issue the Emergency Order to any parent corporations, or to Mr. Kraft. The CD does not require a penalty from Kraft Industries or Mr. Kraft nor does it provide any protections for them. They are not parties to the case or the CD as they were not recipients of the EPA Emergency Order.

Comment Topic 17: The civil penalty is too high.

On the other hand, about 34 comments state that the penalty amount is too high or excessive. For example:

- I do not agree with the EPA on the 1.1 million dollar fine on New Indy. Sense [sic] New Indy inherited the problem from Resolute. If anything the fine should be cut in HALF because New Indy is not at fault for all of the problems that had occurred.
- We do not condone the excessive fine levied upon this company, as they continue to make the necessary improvements to the operations of this mill that greatly supports the community. The fine will most likely be detrimental to their continued improvements and ask the governments to reconsider imposing such penalties.
- 1.1 million dollars is a little excessive for this fine

Response:

The United States believes that the penalty amount is appropriate, and these comments do not require withdrawing from the proposed Consent Decree. The response to this topic is largely very similar to the response to the preceding topic that the civil penalty is too low. We refer the commenters to the subheadings called “Applicable Laws” and “The Penalty in this Case,” which show that under the CAA, the maximum penalty available in this case is \$4.3 million, and New Indy is paying about 25% of the maximum amount legally available.

The 75% reduction was largely for New Indy’s cooperation in dealing with the H₂S issues, as explained above. However, due to the size of the company, and to the severity of the air emissions and impacts on public health, the government finds it important to require a \$1.1 million penalty to punish New Indy for its violations and to deter future violations by New Indy or other similarly situated industries. Thus, the civil penalty is not too high, and these comments do not require withdrawing from the proposed Consent Decree.

VI. PUBLIC COMMENT PROCESS

Comment Topic 18: The public comment process was flawed.

At least 35 comments raised complaints about the public comment process, most of which had to do with the way the EPA handled the public meeting on January 25, 2022. For example:

- ...the “presentation” put forth by the EPA on January 25, 2022, was insulting to say the least. To hire “professionals” to come forward and talk about how safe and normal hydrogen sulfide is [...] when we are being poisoned by numerous other chemicals with far greater devastating side effects is shameful.

Counsel for the Putative Class claimed that the EPA ignored their clients’ complaints and expert opinions and failed to cooperate and communicate with them, weighing against approval of the proposed Consent Decree. Counsel for the Putative Class also claim that the EPA’s comment period was inadequate because at the time of writing the comments, the EPA had not yet provided complete responses to pending the Freedom of Information Act (FOIA) requests related to New Indy.

Response:

The comments do not require withdrawing from the proposed Consent Decree because the public comment process was robust and provided adequate opportunities for the public to review and comment on the CD. The United States exceeded the regulatory requirement by offering the public extra opportunities to comment on the proposed Consent Decree. The public comment process is required by 28 § C.F.R. 50.7. Because of the high-profile and sensitive nature of this matter, the EPA wanted to give the public an opportunity to orally present comments on the proposed Consent Decree, and therefore held the public meeting on January 25, 2022. Such a meeting is not required by statute or regulation. In an effort to give the public a meaningful opportunity to comment, the EPA gave a presentation on the factual history and legal framework of the civil action being settled by the proposed Consent Decree. Medical professionals from Emory’s Pediatric Environmental Health Specialty Unit were also present to give an independent presentation on H₂S. The United States has reviewed the transcript of the public meeting, and has considered the comments made orally at that meeting as part of this Response to Comments.

Not only did the EPA hold a public meeting that was not required, but it also agreed to meet with counsel for the Putative Class and their experts before the public comment period began, and the Department of Justice agreed to extend the public comment period an additional 30 days. As with all comments received, the EPA carefully considered the Putative Class’ experts’ opinions. The information presented to the EPA during the December 16, 2021 meeting was highly duplicative of the information already submitted to the court in the Putative Class’ motion to intervene. The EPA had already had the chance to review this information in the process of opposing the motion to intervene and was aware of it while negotiating the terms of the proposed Consent Decree. The little new information presented to the EPA on December 16, 2021 was either outside the scope of the EPA’s action or did not change the EPA’s position on the proposed Consent Decree terms.

Regarding comments on the EPA’s failure to provide complete responses to FOIA requests regarding New Indy prior to the close of the public comment period, the public had adequate information to perform a comprehensive analysis of the terms of the proposed Consent Decree within the time allowed. The terms of the proposed Consent Decree speak for themselves. Nothing in the CAA or the Department of Justice’s regulations require the United States to disclose a “complete and transparent record” of the information it considered in arriving at the

terms of a proposed Consent Decree, much of which would be protected from public disclosure under exemptions contained in FOIA. Any rights to information under FOIA are separate and distinct from the right to comment on a proposed Consent Decree under 28 § C.F.R. 50.7.

VII. VARIOUS OTHER TOPICS OUTSIDE THE SCOPE OF THE CIVIL ACTION AND UNRELATED TO H₂S

This section responds to various comments that are not specifically related to the EPA Emergency Order, the complaint, or the proposed Consent Decree. None of these comments require withdrawing from the proposed Consent Decree because they are outside the scope of this civil action. The comments are often related to the New Indy Facility, but are not specific to H₂S or to the proposed Consent Decree. The United States takes these comments as accurate but not specifically relevant to whether to continue with or withdraw the proposed Consent Decree.

Comment Topic 19: New Indy has had negative economic impacts on commenters (58 comments)

About 58 times the comments stated that New Indy emissions have had negative economic consequences on the commenter. Most frequently, commenters worried that their property values were falling due to the air conditions. Many stated that they had incurred costs of installing air filters at home, or costs to drive to get away from New Indy air emissions. For example:

- I am worried about the value of our home declining.
- If home values depreciate or buyers refuse to relocate to this area we will lose everything we have invested.
- We have been putting up with this for almost two years and have recently purchased an air purifier for \$1000.
- I had to spend money didn't have at the time to upgrade our windows, doors, and air filters to just be safe in my own home!

Response:

The United States assumes that comments about specific individuals incurring costs for air filters and the like are accurate. Comments about declining property values are more difficult to assess without some sort of analysis of the real estate market, which is beyond the scope of this response. We assume for purposes of this response that property values may indeed be adversely impacted.

The proposed Consent Decree aims to control H₂S and enforce the EPA's CAA Section 303 Emergency Order that established health-based H₂S concentration levels. H₂S. Section 303 of the CAA allows the EPA to issue orders and file a civil action to abate a "substantial endangerment" to public health. The statute does not authorize the United States to sue on behalf of private individuals to recover economic losses for those individuals.

The proposed Consent Decree here resolves only the Section 303 "emergency" claim associated with H₂S (and associated penalties), as filed in the civil action. The proposed Consent Decree

does not prohibit any individual from seeking monetary damages from New Indy for diminution of property values or for incurred costs of filters and other measures.

Comment Topic 20: New Indy changed processes, potentially violating “PSD” regulations, and submitted unreliable modelling results in doing so.

About 44 times, the comments related to how New Indy was allowed to change processes, by converting from processing bleached paper to brown containerboard. Some of these comments stated that the regulators should not have approved this process change. A few additional comments included specifics (notably from the attorneys for the Putative Class) about the magnitude of emissions (11 comments), estimates of emission limits having to do with the conversion, and critiques of the air model New Indy used to estimate changes in emissions. Some commenters argued that New Indy’s modeling results of projected H₂S emissions are not reliable and underestimate the amount of H₂S emissions coming from the New Indy Facility. For example:

- We were shocked to find that the EPA State of South Carolina [sic] let New Indy make radical changes to their operations without a complete and comprehensive review of what would be needed to avoid an increase in air and water pollution. They actually cut back on pollution equipment and controls as they expanded and changed the nature of their activities.
- In closing I would like to know why there were no specific steps enforced by the Federal Government or the Local Government when the plant was converted from processing white paper to brown paper.
- I understand that upon purchasing the mill, New Indy converted from bleached to brown pulp. Additionally, it is my understanding that along with this conversion, New Indy purposely removed their stripping equipment and subsequently misrepresented their information to the DHEC.
- New Indy had misleadingly predicted a total reduced sulfide (which includes H₂S) increase of 2.2 tons per year (with a 10 tons per year threshold). In April 2021, their H₂S levels were equivalent to 3600 tons per year based on the EPA's own measurements.
- This conversion and deceit by New Indy have resulted in H₂S emissions of 3,650 tons per year. This far exceeds the Federal Emissions limit of 10 tons per year.

Response:

Because this civil action and proposed Consent Decree do not relate to PSD claims, and do not prohibit such claims in the future by any plaintiff, these comments do not justify withdrawing from the proposed Consent Decree. The CAA does regulate process changes in certain circumstances under the “new source review” (NSR) permitting program, which is typically implemented by states as part of their State Implementation Plans. Under the NSR program, before constructing a new major source, or constructing a modification that significantly increases the emissions of certain pollutants at an existing major source, the owner or operator must apply for and obtain a permit. There are three types of NSR permitting programs, each with

a different set of requirements. The Prevention of Significant Deterioration (PSD) permitting program applies in areas that attain national ambient air quality standards. Whether an emission increase requires a PSD permit depends on the amount of increase, and different pollutants have different thresholds that trigger PSD (i.e., the amount of increase in emissions that calls for PSD permits depends on the pollutant being emitted). Predicting whether the modification will increase pollution, and by how much, often involves running models, or simulations.

The civil action here does not relate to whether New Indy did or should have submitted a NSR/PSD permit application and obtained a permit before it converted from processing bleached paper to brown containerboard. The question in *this* civil action is whether New Indy was emitting H₂S at levels that caused an “imminent and substantial endangerment” to public health. The NSR/PSD claim requires a factual inquiry into matters that occurred in 2020, such as changes at the Facility and predictive emission modelling. The CAA Section 303 claim requires proof of a source that is currently causing an endangerment; it is prospective, not retrospective. Similarly, the proposed Consent Decree does not relate to NSR/PSD, it solely requires New Indy to undertake measures to control H₂S, including operational steps, monitoring, reporting and emission thresholds.

However, the proposed Consent Decree does not prohibit the EPA, DHEC, a non-governmental entity, nor any private individual or corporation from pursuing New Indy for alleged PSD violations. In fact, a group of citizens filed a PSD case against New Indy in 2022. As such, entry of the proposed Consent Decree does not eliminate or prevent the investigation into PSD issues. EPA continues to examine the information submitted by New Indy. Withdrawing from the proposed Consent Decree would require the United States to spend effort and resources resolving H₂S issues rather than proceeding with any PSD investigation.

Comment Topic 21: New Indy has positive economic impacts on the community (87 comments)

About 87 times the comments stated that New Indy has an important positive impact on the local economy by supplying jobs and taxes. Some of the commenters identified themselves as employees of New Indy, and others did not. Some of these commenters identified themselves as persons who conduct business with New Indy. For example:

- New Indy is a vital part of our economic engine. We rely a lot on the employment of our citizens and their tax base to keep our economy going.
- This mill employs hundreds of people and supplies jobs for hundreds of other contractors both locally and nationally. It supports the local economy and supports me.
- We have done business with New Indy since its inception and find them as an important part of the fiber supply chain.
- This mill provides 1,000s of job [sic] in the local area, not sure at the facility itself but for loggers, truck drivers, foresters, machinist, and many other businesses that support the facility.

Response:

The United States takes no position on whether New Indy is a good employer, business partner, or taxpayer. For purposes of this response, we assume that the comments are true.

The EPA Emergency Order required, and the proposed Consent Decree would require, New Indy to undertake specified operational changes to control H₂S, monitor and report H₂S emissions, and keep the emissions below the 70 and 600 ppb thresholds. These measures will be expensive. Indeed, New Indy has stated that its total costs of complying with the EPA Order, court injunction, and the proposed Consent Decree would reach \$50 million spread out over several years. However, the United States does not believe that such expenses are beyond New Indy's financial wherewithal, nor that expenditures of this level would cause New Indy to lay off employees, terminate contracts, or shut down the Facility. New Indy has not argued that any of those circumstances are likely to occur because of the proposed Consent Decree.

As for the civil penalty, the United States did not specifically factor in New Indy's role as an economic engine in the area when agreeing to the \$1.1 million penalty. The United States did consider the size of the New Indy business to avoid unduly harming its ability to continue to operate. This penalty represents a 75% discount from the maximum allowable amount, and it is unlikely that New Indy would agree to a penalty that would unduly inhibit its ability to continue in business.

Comment Topic 22: General support for New Indy.

About 110 times the comments expressed generalized support for New Indy as a company, for the Catawba plant itself (including historically under previous ownership), or for the proposed Consent Decree in general as a good resolution that is fair to New Indy. For example:

- We support the New-Indy, Catawba Mill, as they have gone to great lengths improving the safety, reliability and operations of this old facility.
- The paper mill is a fixture in our community.
- This mill was slowly deteriorating before New-Indy converted operations to make brown paper. Now, the mill is revitalized.
- New Indy is doing everything the EPA and DHEC ask of them . . . I think New Indy has gone far beyond what is expected of them.
- I believe that New-Indy will comply with the terms and spirit of the Consent Decree.
- As you determine whether to approve the Consent Decree, I ask that you 1) review the data and science; 2) consider that New-Indy has worked tirelessly and in good faith to address the excess odor issue. . . .

Response:

We assume for purposes of this response that the comments are accurate.

These comments do not specifically mention any aspect of the proposed Consent Decree (*e.g.*, injunction or penalty), so we interpret the comments to be supporting New Indy in a general

sense, but not necessarily in favor of or opposed to the proposed Consent Decree. Generally, these comments imply that New Indy is a “good” company.

In this civil action, the United States did not allege that New Indy violated any regulation, permit, or law. Also, in the proposed Consent Decree, New Indy does not admit that is liable for any claims, nor that the H₂S thresholds are valid. Accordingly, we do not believe that this comment topic calls for withdrawing from the proposed Consent Decree.

However, the EPA is continuing to investigate any on-going sources of emissions from New Indy, and whether New Indy did indeed violate some permit, law, or regulation. The United States reserves the right to enforce the law if such violations are found.

Comment Topic 23: Clean Water Act Discharges and Permit (94 comments)

About 94 times, the comments focus on Clean Water Act discharges or permit issues. Some comments state that New-Indy should be required to obtain a new Clean Water Act discharge permit (referred to as an “NPDES” permit) and some of these comments suggest that New Indy should improve lagoon number 4 to protect groundwater. For example:

- The Aeration Stabilization Basin is unsatisfactory according to DHEC’s NPDES Inspection in March 2021. . .
- New-Indy also needs to have all of their permits reexamined. Since they changed the process when they took over the plant, their NPDES discharge permit under the clean water act, should be reviewed to ensure that additional priority pollutants are monitored. Also, since it appears that their production has gone up exponentially, their hazardous waste management practices need to be evaluated.
- That doesn't even cover the water leaching from their holding ponds which is polluting the Catawba river which is a source of drinking water for many communities around here.
- Did you know Dioxins are Cancerous. Did you know there is Seepage at Slu[d]ge Lagoon 4? Did you know this lagoon is right next to the Catawba, where we get our drinking water? Did you know the Lagoon is Not Lined?
- Of particular concern is Sludge Lagoon No. 4, which abuts the Catawba River. The lagoon is near the end of its service life and has been eroding in recent years. In fact, the voluntary cleanup oversight contract that New Indy signed in 2018 when it purchased the property required that New Indy close and cap the lagoon. Despite New Indy’s agreement to close and cap the lagoon, reports and letters from DHEC indicate that New Indy intends to continue using the lagoon for many years. Also of note is a finding by engineers in New Indy’s phase one environmental assessment that lagoon dikes may not meet code and are allowing seepage, which potentially could end up in the Catawba River.
- The compound has been detected in four aging waste lagoons at the New Indy plant, and at least one of those lagoons — known as Sludge Lagoon 4 — has been eroding or leaking in recent years, according to a 2020 report filed with the South Carolina Department of Health and Environmental Control.

Response:

A revised Clean Water Act discharge permit (referred to as an “NPDES” permit) is not required to address the imminent and substantial endangerment from H₂S air emissions at issue in this action, and any NPDES-permit related issues are outside the scope of this action. Further, the complaint and proposed Consent Decree do not relate to groundwater at all, and they are not appropriately addressed by a CAA case. The proposed Consent Decree does not prevent New Indy, the EPA, or DHEC from addressing any surface or groundwater issues under other authorities, and any claims related to these issues are preserved for future resolution. In fact, DHEC and New Indy entered into a consent order on June 29, 2022 to resolve alleged violations by New Indy of the South Carolina state water pollution control requirements and permits.

Comment Topic 24: General Comments on EPA (24 comments)

Some comments suggested that the EPA should improve program evaluation and audits on facilities and identify good practices for implementing and improving the state/local program, and that the Federal government must adequately fund the EPA for appropriate oversight. While some comments in this category praise EPA’s pollution control efforts in general, others criticize EPA in general for failing to live up to its mission to protect human health and the environment.

Response:

These comments do not relate to the instant proposed Consent Decree and are not relevant to the decision whether to withdraw the proposed Consent Decree.

Comment Topic 25: All Paper Mills Create Odors and New Indy is Not the Only Source of Odor Issues in the Community

Some comments state that all paper mills create odors. A little more than half of the comments came from commenters who identified themselves as being New Indy employees or as having ties to the paper industry. For example:

- I have lived in this location for 8 years and occasionally there is a “paper mill odor” early in the morning, that was true of prior owner operators of the mill as well as New Indy. It is not a problem for me or my family, in fact I know what that small occasional odor means to this area.
- New Indy along with all paper mills across this nation will emit odors on occasion. This is normal.

Other commenters argue that New Indy is not the only sources of the odor issues in the community. For example:

- I believe it is entirely possible that there are other sources for some of the complaints which have not been investigated. There are more waste water treatment facilities in all the effected [sic] areas than one single paper mill.

- We have farmers who put turkey poop on fields that border our property. These people complaining of bad odors don't even know how bad that smells, and yet we are not asking them to stop farming their land.

Response:

As discussed above in Comment Topics 1 and 2, the purpose of the proposed Consent Decree is to address an imminent and substantial endangerment posed by elevated levels of H₂S, not odor.

Comment Topic 26: South Carolina's toxic air pollutant law

Some commentators argued that the injunctive relief is inadequate because it fails to ensure that New Indy is in compliance with Standard No. 8 of South Carolina's Toxic Air Pollutants regulations for hazardous air pollutants (HAPs). (Putative Class Comments at 32).

Response:

As discussed above, the purpose of the proposed Consent Decree is to address an imminent and substantial endangerment, not to address New Indy's compliance with any specific CAA requirement. The proposed Consent Decree reserves the right of the United States to pursue future action for penalties or injunctive relief for any such violations not expressly specified in the July 12, 2021 Complaint. Regardless, according to DHEC, New Indy is exempt from Standard 8 as it applies to federal HAPs via Standard 8.D.(1), and DHEC exempted New Indy from Standard 8 as it applies to the non-federally listed HAPs of concern in this case (methyl mercaptan and H₂S) via Standard 8.D.(3). (Declaration of Denis Kler).